IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 24 of 2002

With

CIVIL APPLICATION NO.70 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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UNION OF INDIA

Versus

ASHABEN BABULAL GANGWANI

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Appearance:

1. First Appeal No. 24 of 2002

MR MG NAGARKAR for appellant No. 1

MR JAYRAJ CHAUHAN for Respondent No.1,2,3,5

MR RAKESH R VYAS for Respondent No. 1

UNSERVED-EXPIRED (R) for Respondent No. 4

Ms. Vasavadatta Bhatt,learned advocate, also

appeared for Railway as intervenor.

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CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 24/01/2003
05/02/2003
06/02/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. The Union of India, through the General Manager, Western Railway - appellant, original respondent, has filed this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as "the Act") against judgement and award dated 6.6.2001 passed by the Railway Claims Tribunal, Jaipur Bench, Ahmedabad (hereinafter referred to as "the Tribunal") in Claim Application No. OA9900090. The Tribunal by the impugned judgement has allowed the application of the original applicants (respondents herein) and has held that the applicants shall be entitled to receive compensation of Rs. 4,00,000/(Rupees four lakhs ) from the respondent Railway, appellant herein. The Tribunal also held that along with compensation the claimants are also entitled to interest at the rate of 12% per annum from the date of filing of the application which shall be apportioned between the applicants equally i.e. each of the applicants shall get Rs. 80,000/- plus interest thereon, along with cost of application as per the Rules. As applicant Nos. 2 and 3 were minors, the Tribunal passed order of depositing the amounts in a Nationalised Bank as fixed deposit.

2. The facts giving rise to this appeal are as under:

2.1 Shri Babulal Motiram Gangwani - since deceased, purchased a railway ticket on 23.5.1998 at Ahmedabad Railway Station for his journey along with his family members from Ahmedabad to Abu. The deceased along with other family members boarded the Ahmedabad-Abu Road DMU train No. 101. As the train moved, the deceased who was standing near the entrance/door of the compartment fell down from the train on account of heavy jerk, sustained severe injuries and died on the spot. The deceased was survived by the applicants. In view of the same, the legal heirs and representatives of the deceased - the

applicants have filed application for claiming compensation of Rs. 4,00,000/- (Rupees four lakhs) before the Tribunal.

2.2 Before the Tribunal, the Railway filed written statement and contested the claim of the applicants. The Railway denied the statements made in the application. It was submitted that the accident in question is not an "untoward incident" as defined in the Act. The deceased died while trying to board the running train and he was responsible for his death due to his own negligence. The Railway denied its negligence and submitted that the Railway was not liable to pay any compensation to the applicants.

2.3 Before the Tribunal, the issues were raised and the applicants produced documentary evidences like copy of inquest panchanama at Exh. 9, copy of certificate from the Civil Hospital, Ahmedabad at Exh. 10, original ticket at Exh. 11, copy of panchanama of place of occurrence at Exh. 12, copy of post-mortem note at Exh. 13, copy of ration card at Exh. 14 and copy of death certificate at Exh. 15. Applicant No. 1 was examined orally.

2.4 The respondent Railway did not examine any witness nor did the respondent tender any evidence or document.

2.5 The Tribunal considered the case of the applicants and held that the deceased was a bona fide passenger of the train. The Tribunal considering the provisions of Section 123(c)(2) and Section 124A of the Railways Act, 1989 held that the applicants had proved that the deceased was a bona fide passenger and that the accident is covered within the ambit of Section 123(c) of the Railways Act, 1989. As the applicants were dependants of the deceased, they were entitled to compensation of Rs. 4,00,000/-. The Tribunal, as indicated above, granted interest at the rate of 12% per annum from the date of the application on the said amount.

2.6 As stated above, the present appeal has been filed by the Railway against the aforesaid award of the Tribunal. However, at the time of hearing of this appeal, the learned counsel for the Railway made it clear that they are not contesting the merit of the award given by the Tribunal. They want to confine their challenge to the award so far as the part of interest at the rate of 12% per annum granted by the Tribunal to the applicants

CONTENTION OF THE LEARNED COUNSEL MR. NAGARKAR AND MS. VASAVDATTA BHATT FOR THE RAILWAY - APPELLANTS:

2.7 The learned counsel for the appellant has also invited our attention to the provisions of the Railways Act, particularly to Section 123 (a) of the Act which defines the term "accident" so as to mean "an accident of the nature described in Section 124." He has also relied on Section 124 of the Act which reads as under:-

"124. Extent of liability.- When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passengers and accompanying him in his compartment or on the train, sustained as a result of such accident."

Section 124-A reads as under:-

2.8 "(124-A. Compensation on account of untoward incidents.- When in the course of working in a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitled a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to--

(a) suicide or attempted suicide by him;
(b) self-inflicted injury;
(c) his own criminal act;
(d) any act committed by him in a state of intoxication or insanity;
(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.- For the purposes of this section "passenger" includes-

(i) a railway servant on duty; and
(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

Explanation.- For the purposes of this section "passenger" includes a railway servant on duty."

2.9 The learned counsel for the appellant has also placed reliance on Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, as amended from 1997 which reads as under:

"Rule 3 - Amount of compensation.- (1) The amount of compensation payable in respect of death or injuries, shall be as specified in the Schedule.

(2) The amount of compensation payable for injury not specified in Part II or Part III of the Schedule but which, in the opinion of the Claims Tribunal is such as to deprive a person of all capacity to do any work, shall be rupees two lakhs.

(3) The amount of compensation payable in respect of any injury (other than an injury specified in the Schedule or referred to in sub-rule (2) resulting in pain and suffering, shall be such as the claims Tribunal may after taking into consideration medical evidence, besides other circumstances of the case, determine to be

reasonable;

Provided that if more than one injury is caused by the same accident, compensation shall be payable in respect of each such injury;

Provided further that the total compensation in respect of all such injuries shall not exceed rupees forty thousand.

(4) Where compensation has been paid for any injury which is less than the amount which would have been payable as compensation if the injured person had died and the person subsequently died as a result of the injury, a further compensation equal to the difference between the amount payable for death and the already paid shall become payable.

(5) Compensation for loss, destruction or deterioration of goods or animals shall be paid to such extent as the Claims Tribunal may, in all circumstances of the case, determine to be reasonable."

Rule 4 speaks of limit of compensation, which we reproduce hereunder:

"4. Limit of Compensation. Notwithstanding anything contained in rule 3, the total compensation payable under that rule shall in no case exceed rupees four lakh (as amended with effect from 1.11.1997) in respect of any one person."

"4. For the Schedule amended to the said Rules, the following Schedule shall be substitute, namely:-

SCHEDULE (See: Rule 3)
Compensation Payable for Death and Injuries
PART I

Amount of compensation

For death Rs. 4,00,000/-"

2.10 The learned counsel for the appellant Railway submitted that, as per the provisions of the Railways Act

and the Rules, the Tribunal is governed by Railway Accidents (Compensation) Rules as amended in 1994 and Rule 4 of the said Rule limits the compensation to Rs. 4,00,000/- (Rupees four lakhs). Besides, there is no mention of interest in the said Rules and the amount of compensation becomes payable only after it has been determined by the Tribunal under the provisions of Section 127 of the Railways Act, 1989. In view of the same, awarding of interest from the date of filing of the application is not justifiable under the law. The learned counsel for the appellant Railway submitted that the Tribunal has no power and jurisdiction to grant interest to the applicants.

2.11 The learned counsel for the Railway stated that the compensation claimed by the applicants has to be determined under Section 127 of the Act. It does not become payable as soon as the claim is lodged by the applicant. The claim for compensation is in the form of damages and till the damages are ascertained by the appropriate forum it cannot be said that it is an amount of compensation payable till it is determined or decided. It is not an existing right of the claimant to get whatever is claimed in his application. The amount of compensation becomes payable after it is determined by the Tribunal and if thereafter the Railways fail to pay it can be directed to pay interest from the date of the order of determination but it cannot be directed to pay interest before the claim is ascertained or decided or determined by the Tribunal. The liability of the Railway Administration would commence after the compensation amount is determined and not before.

2.12 Without prejudice to the aforesaid contention, the learned counsel for the appellant has further submitted that the Tribunal has clearly erred in granting interest at the rate of 12% per annum in view of the fact that the Hon'ble Supreme Court has recently awarded interest at the rate of 9% after considering the provisions of the Reserve Bank of India Act in the case of KAUSHNUMA BEGUM VS. NEW INDIA ASSURANCE CO. LTD., reported in 2001(2) SCC page 9. Therefore, granting of interest at the rate of 12% per annum by the Tribunal is also excessive and bad in law.

2.12A The learned counsel for the appellant has relied on the decision of the Hon'ble Supreme Court in the case of RATHI MENON VS. UNION OF INDIA reported in (2001) 3 SCC 714 = AIR 2001 SC 1333. In that case after considering the entire provisions of the Act and Rules, the Hon'ble Supreme Court has granted compensation and

also interest at the rate of 12% from the date of passing of the award and not from the date of the application. The Hon'ble Supreme Court has further considered various provisions of the Railways Act, 1989 and in paragraph 35 observed as follows:

"In the result, we allow these appeals and set aside the impugned judgment of the High Court. We direct the Railway Administration to pay the amount awarded by the Claims Tribunal to the appellant (if not already paid) within three months from today together with interest at the rate of 12% per annum from 27.6.1997 (the date of the order passed by the Claims Tribunal)."

2.12B The learned counsel for the Railway relied on the judgement of Bombay High Court in the case of IRON & HARDWARE (INDIA) CO. VS. SHAMLAL & BROS. reported in (1954) 56 Bombay Law Reporter 473 in which the Court observed on page 477 thus:

"Now, "debt has been defined in S. 2(6) as any pecuniary liability, whether payable presently or in future, or under a decree or order of a civil or revenue Court or otherwise, or whether ascertained or to be ascertained which was incurred as provided in sub-cls. (a) and (b) or is due as provided in sub-cl. (c). xxxxxxxx

"In my opinion, with respect to the learned Judge, greater emphasis should be placed on the expression "any pecuniary liability" rather than on the expression "whether ascertained or to be ascertained". Before it could be said of a claim that it is a debt, the Court must be satisfied that there is a pecuniary liability upon the person against whom the claim is made and the question is whether in law a person who commits a breach of contract becomes pecuniarily liable to the other party to the contract. In my opinion it would not be true to say that a person who commits a breach of the contract incurs any pecuniary liability, nor would it be true to say that the other party to the contract who complains of the breach has any amount due to him from the other party. As already stated, the only right which he has is the right to go to a Court of law and recover damages. Now, damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does

not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The Court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination there is no liability at all upon the defendant. The expression "to be ascertained" may well apply to a case which I have indicated earlier where the pecuniary liability cannot be ascertained without accounts being taken or some other process being gone through. But the whole basis of a suit for damages is that at the date of the suit there is no pecuniary liability upon the defendant and the plaintiff has come to Court in order to establish a pecuniary liability."

2.12C In view of the aforesaid judgement it cannot be said that as soon as the accident takes place the liability to pay compensation or damages is fastened on the Railways. The liability is to be determined and decided by the Court of law and thereafter only the pecuniary liability to pay compensation fixed on the railways. The interest in such cases cannot be awarded prior to the determination of the amount of compensation and prior to deciding whether the railways are liable to pay the damages or compensation. At the first instance the Tribunal has to determine the question of liability and then to determine the amount of compensation. After doing so it can award interest from the date of the decision but not prior thereto. It could be for the Tribunal to decide whether to grant interest and the rate of interest, if any. But it would be from the date of its decision and not prior thereto whether the applicant prays for interest or does not pray for interest.

2.12D The learned counsel for the Railway has stated that the aforesaid binding decision of the Bombay High Court has been followed by the same High Court in First Appeal No. 177 of 2002 in the case of UNION OF INDIA Vs. SANJAY SAMPATRAO GAIKWAD decided on 27.2.2002 where the learned Single Judge R.J. Kochar has held that the order of the Tribunal awarding interest from the date of

application be quashed and set aside. The Railway has to pay interest, if awarded, from the date of the determination of the compensation under Section 127 of the Act.

2.12E In KAUSHNUMA BEGUM V. NEW INDIA ASSURANCE CO. LTD., reported in (2001) 2 SCC 9, the Supreme Court has to consider the provisions of Sections 165, 140 and 163-A of the Motor Vehicles Act, 1988. In paragraph 24 the Supreme Court has observed, which we reproduce hereunder:_

> "24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf". Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs.50,000 paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date."

CONTENTIONS OF THE LEARNED COUNSEL MR. CHAUHAN AND MR. VYAS FOR THE CLAIMANTS:

2.13 The learned counsel for the claimants relied on the judgement of the Hon'ble Supreme Court in the case of N. PARAMESWARAN PILLAI VS. UNION OF INDIA reported in (2002) 4 SCC 306. In that case, the Apex Court after considering the decision in the case of RATHI MENON VS. UNION OF INDIA (supra), in para 5 has observed thus:

> "In view of the authoritative pronouncement made by this Court under similar circumstances, the present appeal has to be allowed by setting aside the impugned judgement of the High Court. Consequently we direct the Railway Administration to pay to the appellants a total sum of Rs. 4

lakhs instead of Rs. 2 lakhs as awarded within a period of three months from the date of this judgement with interest as awarded by the High Court. If the amount of Rs. 2 lakhs as awarded by the Tribunal has already been paid, the appellants would be entitled to interest on the balance amount of Rs. 2 lakhs from the date of the petition till the actual payment and not on the whole amount as awarded by us. The appeal is allowed accordingly."

2.14 The learned counsel for the claimants has further invited our attention to an unreported decision of a Division Bench of this Court in the matter of UNION OF INDIA VS. MITHIBEN in First Appeal No. 38 of 2002 decided on 18.1.2002 wherein this Court has held that the respondent claimants are entitled to interest on the amount of Rs. 4,00,000/- (Rupees four lakhs) at the rate of 12% per annum from the date of claim application upto 31.12.1999 and thereafter at the rate of 9% till realisation and the appeal filed by the Railway was partly allowed to that extent. The Division Bench considered the scheme of the Act and ultimately observed in para 7 of its judgement thus:

"7. This contention requires to be noted only to be rejected. Obviously, rules 3 and 4 of the aforesaid Rules deal only with the subject matter of award, namely, quantum of compensation. It is obvious that awarding interest on the amount of compensation is not confined to the provisions of the rules. In other words, it cannot be contended that, unless there exists a statutory provision for awarding interest, no interest can be awarded at all. It is well understood that a reasonable rate of interest is awarded on the amount of compensation only on account of the delayed payment. This contention is, therefore, required to be rejected."

2.15 Relying on the aforesaid decision, the learned counsel for the appellant has submitted that the appeal is to be allowed to that extent.

OUR CONCLUSION:

3. While considering the contention in respect of interest, we have considered the decision of the Full Bench of the Bombay High Court in the matter of Union Bank of India v. Dalpat Gaurishankar Upadyay, reported in AIR 1992 Bombay 482. In paragraph 21 of the said

decision, the Full Bench has considered the meaning of three expressions, "interest", "simple interest" and "compound interest" as given in different authoritative law dictionaries. Black's Law Dictionary (Fifth Edition) defines these expressions as follows:

> ""Interest".- Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money.... Payments a borrower pays a lender for the use of the money"
>
> "Simple Interest".- That which is paid for the principal or sum lent, at a certain rate of allowance made by law or agreement of parties. Interest calculated on principal where interest earned during period before maturity of loan is neither added to the principal nor paid to the lender. That paid on the principal lent as distinguished compound interest which is interest paid on unpaid interest."
>
> "Compound Interest".- Interest upon interest i.e. interest paid on principal plus accrued interest. Exists where accrued interest is added to the principal sum, and the whole treated as new principal for the calculation of the interest for the next period. Interest added to principal as interest becomes due and thereafter made to bear interest."

3.1 We have also considered the meaning of "interest". As per West's Legal Thesaurus "interest" may mean "a charge that is paid to borrow for use of money". In Concise Oxford Dictionary, the term has been defined as "money paid for the use of money lent". In Blacks Law Dictionary, the expression "interest" has been defined thus:

> "Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money"

4. The interest payable to the claimants can be considered to be an interest on equitable ground and the interest can also be awarded by the court on equity. The claimants had approached the Railway Claims Tribunal only when the Railway authority has not considered to grant compensation and the claimants had to approach the Railway Claims Tribunal as per the provisions of Section

124A of the Indian Railways Act on account of untoward incident. Under the Act, once the incident has occurred, the liability to pay compensation is on the Railway Administration. The factum of each incident is always within the knowledge of the Railway Administration as such reports are to be furnished by the officers of the concerned Railway Station or the report to be submitted on the investigation carried out by the Railway Police. The factum of the incident is within the knowledge of the Railways and the deceased or the person who has lost his family member or the injured person in view of the accident are entitled for compensation and it is only when the compensation is not paid, they have to file Claim Application before the Claims Tribunal. Accordingly when the application for compensation is decided by the Claims Tribunal, as per the Schedule of the Act or Rule and as the payment is delayed, which was available to the claimant at the earlier stage, on equitable relief claimants are entitled for interest on such delayed payment.

5. We see considerable force in the contention of the appellant Railway from the provisions of the Act, Rules as well as from the judgement of the Hon'ble Supreme Court in the case of RATHI MENON (supra) and the judgement of the Bombay High Court in the case of IRON & HARDWARE (INDIA) CO. VS. SHAMLAL & BROS. (supra) that interest to be paid not from the date of application but from the date of the award.

5.1 However, in view of the judgement of the Hon'ble Apex Court in the case of N. PARAMESWARAN PILLAI VS. UNION OF INDIA (supra) which is subsequent to the judgement in the case of RATHI MENON (supra) in which also the Apex Court has considered the decision in the case of RATHI MENON (supra) and thereafter held that the claimants are entitled to interest from the date of the application, we have no alternative but to follow the said latest binding decision which is subsequently delivered. In view of the latest binding decision of the Hon'ble Supreme Court in the case of N. PARAMESWARAN PILLAI (supra) it will not be possible for us to agree with the contention of the learned counsel for the appellant on the basis of the judgement in the case of RATHI MENON (supra) as well as the decision of the Bombay High Curt in the case of IRON & HARDWARE (INDIA) CO. (supra). In this case we are also following the law laid down by Division Bench judgement of this court in the case of UNION OF INDIA Vs. MITHIBEN (supra) the same is in consonance with the case of PARAMESWARAN PILLAI (supra). We have also considered the provisions

regarding interest. In view of the above, the claimants are entitled to interest from the date of the application.

6. In view of the decision of the Apex Court in KAUSHNUMA BEGUM (supra), we are of the view that the interest awarded to the claimants deserves to be reduced and to that extent the Appeal is to be allowed partly by modifying the interest part. The Tribunal has awarded interest at the rate of 12% while granting compensation and in our view and in view of the decision of the Apex Court, the claimants are entitled to interest at the rate of 9% per annum from the date of the Application.

7. No other contentions were raised before us and accordingly the Appeal is partly allowed to the above extent. The Award of the Tribunal, awarding compensation is confirmed and modified only to the extent that the claimants are entitled to interest at the rate of 9% per annum from the date of the Application.

8. As observed earlier, respondent No.4 Motiram, father of deceased Babulal, had expired and the remaining respondents are the heirs of said Motiram. As per the award of the Tribunal, a sum of Rs.80,000/-- was available to said Motiram and in view of the fact that the said respondent No.4 Motiram had expired, the compensation granted by the Tribunal to the said applicant i.e. Rs.80,000/-- plus interest and cost is divided equally amongst the rest of the claimants. Respondent No.2 Anitaben and respondent No.3 Bharatbhai are minors. The 50% of the amount plus cost and interest, which is available to deceased Motiram, is ordered to be invested in Fixed Deposit till the said respondents Nos.2 and 3 become major and the remaining amount awarded with cost and interest by the Tribunal in favour of respondent No.4 is payable to respondent No.1 original applicant No.1 and to respondent No.5 - original applicant No.5.

9. Appeal is accordingly partly allowed to the above extent. However, there will be no orders as to costs.

10. In view of the order passed on 28.10.2002 in the Civil Application No.70 of 2002 while granting ad interim relief in favour of the applicant - appellant - Railway Authority, Division Bench had directed to deposit the principal amount with cost with the Tribunal by granting four weeks time. In view of the final outcome in the main First Appeal, when this court has held that the claimants are entitled for interest at the rate of 9% per

annum from the date of the Application, the respondents -claimants are entitled to the said interest from the Railway Authority from the date of the Claim Application. In view of the ad interim relief granted earlier, the applicant Railway Authority is directed to deposit only principal amount with cost. The railway authority is directed to deposit also interest on the said amount at the rate of 9% per annum from the date of the Application. Application being Civil Application No.70 of 2002 is accordingly decided in the above terms with no order as to costs.

(D.K.Trivedi,J)

arg/pkn (K.M.Mehta,J)